

IN THE HIGH COURT OF FIJI AT SUVA
IN THE CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 152 of 2019

BETWEEN: **ONE HUNDRED SANDS LIMITED**
FIRST PLAINTIFF/APPLICANT

AND: **HGW INTERNATIONAL LIMITED**
SECOND PLAINTIFF

AND: **TIMOTHY MANNING**
THIRD PLAINTIFF

AND: **LARRY CLAUNCH**
FIRST DEFENDANT/RESPONDENT

AND: **ALISON SOUTHEY**
SECOND DEFENDANT/RESPONDENT

AND: **FEIZAL YOUNAS HANNIF**
THIRD DEFENDANT/RESPONDENT

AND: **HANIFF TUITOGA**
FOURTH DEFENDANT/RESPONDENT

Date of Hearing : 27 November 2024
For the Plaintiff : Mr Haniff. F
Counsel for the Defendants : Mr Singh. R
Date of Decision : 29 November 2024
Before : Waqainabete-Levaci S.L.T.T, J

R U L I N G

(APPLICATION TO VACATE TRIAL)

BACKGROUND

1. The Plaintiff/Applicant has filed an application for vacation of trial. For this matter trial dates were affixed from 16th to 20th December 2024.
2. This application is made pursuant to the inherent jurisdiction of the High Court.

AFFIDAVIT BY THE PARTIES

3. In their application, the Plaintiff/Applicant solicitor deposes that their primary witness, Mr Timothy Manning has indicated that the Trial dates are unsuitable to him and the Defendants Counsel had been informed in writing on 11 April 2024.

SUBMISSIONS BY PARTIES

4. The Plaintiffs submitted their oral and written submissions. The Defendant has not filed an Affidavit in opposition. They argued that the dates were not convenient to their witness, it was not prejudicial to the Defendants to adjourn the matter and that the court resources will not be vacated as trial dates are allocated during legal vacation. This is a claim for \$28 million regarding the withdrawal of representation at the Supreme Court resulting in the loss of the Casino Licence.
5. Reference was made to the case of Jai Raji -v- Permanent Secretary of Health and AG ABU 0031 of 2020 where it was held by Guneratne, P and Morgan with Lakshman JA that:
“[6] I extract those principles classifying them as (a) The Broad Principles; and (b) Counter Principles,

(a) The Broad Principle

Although the Appellate Court should be slow to interfere with the exercise of discretion of a trial judge to refuse an adjournment it will do so if the refusal will result in denial of justice to the applicant (vide: **Maxwell -v- Keun** [1928] 1 KB 645

(b) The Counter-Principles –

(i) Need for Case Management

The counter, visiting the Commonwealth jurisprudence, could reasonably be said to have come after more than six decades when the concept of case management came about (vide: **Sali -v- SPC Limited** [1993] 67 ALJR 841.

(ii) Ancillary consideration of (a) above

That is, the consideration of not merely the parties to a particular suit but the other listed cases that due to the granting of an adjournment could result in delay, even if the parties in litigation in a particular case consent to adjournment (vide: **State Pollution Control Commission -v- Australian Iron and Steel Pty Ltd** [1992] 29 NSWLR 487 at 493 – 494).

The Resulting (Pre-Dominant) criterion emerging from those principles

[7] As was stated in the case of **State of Queensland -v- I L Holdings Pty Ltd** [1997] 189 CLR 146:

‘Case management is not an end to itself. It is an important and useful aid for ensuring the prompt and efficient disposal of litigation. But it ought always to be bourne in mind, even in changing times, that the ultimate aim of the Court is the attainment of justice and no principle of case management can be allowed to supplant that aim.’

6. The Counsel for Defendants argued that the discretion to vacate trial is based on a judicial discretion. The only ground deposed for adjournment is the non-suitability of the dates to the witness. No reasons why it was not suitable. The hearing had been affixed in April and it appears in the Court records. Despite the legal vacation, the Court can proceed to trials where the judge directs. There is nothing in the Affidavit deposed to suggest the losses sustained from the claim and the reason for adjournment because of the importance of the case.
7. The counsel submitted that trial should proceed.
8. In reply Counsel for the Plaintiff referred the Court to the Statement of Claim where the value of interest to the licence was \$28 million showing that it is a large claim. The Plaintiff witness is booked out for travels and Defendant has not shown how he is prejudiced.
9. Plaintiff could not apply earlier as there were pending matters before the Court.

LAW AND ANALYSIS

10. Order 35(3) of the High Court Rules empowers the Court to vacate trial. It reads:

“the Judge may, if it thinks it is expedient in the interest of justice, adjourn the trial for such time and to such place, and upon such terms if any as he thinks.”

11. It is clear from the provisions of Order 35 of the High Court Rules that the discretion to grant vacation of Trial or otherwise is entirely left to the Court on terms he or she thinks.

12. Therefore I agree with the Honorable Judges of Appeal in the case of Jai Raji -v- Permanent Secretary of Health and Attorney General (Supra) who said:

[10] Consequently, it is a balancing exercise of the Court is required to perform. From a legal philosophical perspectives, Courts in search of justice find the means to accomplish that search in the law striking that essential balance for as it is often said ‘justice must be done according to law’. It is that law which one finds in the established principles in the statute book as judicially interpreted taken in the circumstances of a given case.”

13. The current Claim before me stems from the conduct and action of their Counsels to withdraw and discontinue a matter in the Supreme Court resulting in losses sustained from the cancellation of the Casio Licence.

14. Therefore what lies before me is a matter ready for Trial. The Court records show that:

- (i) The matter was affixed from April this year for Trial;
- (ii) That the only reason that the Plaintiff seeks adjournment is on the basis that the date is unsuitable to the witness;
- (iii) That this is a 2019 matter and Counsel for the Defendant is also personally held liable for the claim as well.

15. The Counsel submitted that he had already made known his intentions that the dates for trial affixed were not amenable to the witness, the Court record has noted this.

16. This is the first trial date. Further delays will adversely affect the Defendants. The only ground for seeking an adjournment is that the dates are not amenable to the witness.

17. I must in my mind consider whether there will be miscarriage of justice if adjournment is not granted.

18. I have considered that this is a serious and primary witness for the Applicant/Plaintiff. To refuse adjournment will mean that their evidence will not properly be put before this Court. There are substantial issues to be determined taking into consideration the Statement of Claim that I have perused today. So yes, there will be a substantial miscarriage of justice if adjournment is not granted.
19. My second consideration is whether the adjournment is prejudicial to the Defendants. They were not aware until now of the application. This is the first time that trial has been affixed. There is inconvenience to the Defendants but will not be prejudicial to their case as Trial has not begun and no evidences has been tendered.
20. Thirdly, the Court must consider, whether for the purposes of case management that adjournment be granted. Ideally, there is no reason to adjourn matters that have been delayed for some time. This Court is not dictated by Counsels or witnesses available dates. Although the Court makes mention of available dates for Trial, at the end of the day the court affixes a date that is available in the diary to hear the matter.
21. The last reason why this Court must adjourn, and this is a matter internal but very crucial to the Court, is for the wellbeing of Counsels, court officers and the Judicial Officer. As much as we have experienced a very long year of back to back trials, the allocation of trial dates a few days before Christmas during legal vacation puts a strain to the Court resources as well as to the Court. This is not part of the normative traditional reasons, but there are empirical data¹ that suggests that there are high stresses associated with judicial officers and lawyers in Australia pertaining to Court work. For judicial officers, such stresses impinge on the integrity and the quality of decisions being made, much so to the detriment of parties. For Counsels, these stresses affect their preparation for trials, advising clients and making submissions to Court. There is a Nauru Judicial Wellbeing Declaration² for which Fiji is a signatory to, recognizing the importance of the judicial officers' wellbeing and encouraging support by judicial institutions to implement actions to address these issues. No one wants a grumpy and burned out judicial officer barking orders and directions down the Counsels throat. Calmness and clarity are proper demeanor displayed in Court by the Court and also by Counsels. There is no hard and fast rule on what pertains to these stresses. Medical reports can confirm stress but may be too late for Counsels that continually work under pressure. As these issues come into the forefront, I would encourage the legal practitioners' forum to explore standards and guidelines to enable their members to address these issues.

¹ Dr Carly Schrever, "Judicial Wellbeing and burnout' a paper presented at the Judicial Officers Workshop on 22nd October 2024.

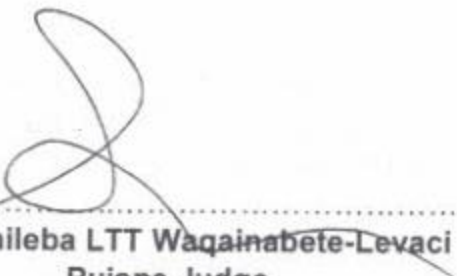
² Signed on behalf of the Acting Chief Justice on 25 July 2024 and attended by the Chief Registrar, Justice Usaia Ratuville and Justice Senileba Waqainabete-Levaci.

22. The Court must adjourn the matter for the proper administration of justice and to ensure parties are well rejuvenated for the performance of their duties.
23. However, costs will be imposed against the Plaintiff for seeking adjournment at a very late stage.

Court Orders

24. Court will therefore Order that:
 - (i) **That Application for vacation of Trial is granted and fresh trial dates affixed for 2025;**
 - (ii) **Costs of \$800 imposed against the Plaintiff payable to the Defendant in 30 days.**




.....
Mrs Senileba LTT Waqainabete-Levaci
Puisne Judge